

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: StaceyAnn McFarlane-Ross	Team: Squad #1	CCRB Case #: 201900039	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/30/2018 6:35 PM	Location of Incident: Canal Street Subway Station (J-line Mezzanine)	Precinct: 05	18 Mo. SOL 6/30/2020	EO SOL 2/14/2021	
Date/Time CV Reported Sun, 12/30/2018 7:40 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 01/02/2019 3:49 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA Kevin Cooper	00954	910251	TB SOD
2. POM Michael Pennacchio	26611	925897	TB SOD
3. An officer			TB SOD
4. POM Leonardo Chavez	21890	925069	TB SOD

Officer(s)	Allegation	Investigator Recommendation
A.SSA Kevin Cooper	Discourtesy: Sergeant Kevin Cooper spoke discourteously to § 87(2)(b)	
B.POM Michael Pennacchio	Force: Police Officer Michael Pennacchio used physical force against § 87(2)(b)	
C.POM Leonardo Chavez	Force: Police Officer Leonardo Chavez used physical force against § 87(2)(b)	
D.SSA Kevin Cooper	Abuse: Sergeant Kevin Cooper refused to provide his name to § 87(2)(b)	
E.POM Michael Pennacchio	Abuse: Police Officer Michael Pennacchio refused to provide his shield number to § 87(2)(b)	
F.POM Michael Pennacchio	Abuse: Police Officer Michael Pennacchio refused to provide his name to § 87(2)(b)	
G.POM Michael Pennacchio	Discourtesy: Police Officer Michael Pennacchio spoke discourteously to § 87(2)(b)	
H. An officer	Abuse: An officer did not process § 87(2)(b)'s complaint regarding officers.	

Case Summary

On December 30, 2018, at approximately 6:35 pm, § 87(2)(b) went to the Canal Street subway station, swiped his metro card and was heading downstairs to the J-line Mezzanine when he observed Sgt. Kevin Cooper, PO Michael Pennacchio and PO Leonardo Chavez, from the Transit Bureau Special Operation Division, issuing summonses to transit riders who failed to pay before entering. § 87(2)(b) informed Sgt. Cooper that there was an issue in swiping the metro cards to enter the subway. Sgt. Cooper responded, “I don’t want to be bothered with that. Get the fuck out of my face” (**Allegation A: Discourtesy**, § 87(2)(g)). § 87(2)(b) then went back to the turnstiles and told the incoming subway riders that there were officers at the bottom of the stairs. A few minutes later, Sgt. Cooper instructed PO Pennacchio and PO Chavez to remove § 87(2)(b) from the subway station. PO Pennacchio and PO Chavez, lifted § 87(2)(b) by his pants and dropped him outside the emergency gate (**Allegations B and C: Force**, § 87(2)(g)). § 87(2)(b) sustained a shoulder injury when he was dropped.

An unidentified uniformed officer, PO1, asked § 87(2)(b) why he was harassing the passengers. § 87(2)(b) told him that he would like to make a complaint against the officers. Sgt. Cooper and PO Pennacchio approached § 87(2)(b) and § 87(2)(b) asked Sgt. Cooper and PO Pennacchio for their names, shield numbers and command. Sgt. Cooper provided his shield number and command to § 87(2)(b) but did not provide his name (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Pennacchio flashed his shield. § 87(2)(b) asked PO Pennacchio to see the shield again and PO Pennacchio responded, “Get your shit and leave” (**Allegation E: Abuse of Authority**, § 87(2)(g)). **Allegation F: Abuse of Authority**, § 87(2)(g). **Allegation G: Discourtesy**, § 87(2)(g). At that point, PO1 told § 87(2)(b) to leave the subway. PO1 did not file § 87(2)(b)'s report against the officers (**Allegation H: Abuse of Authority, Officer** § 87(2)(g)).

There is no video footage associated with this case.

Findings and Recommendations

Allegation (A) Discourtesy: Sergeant Kevin Cooper spoke discourteously to § 87(2)(b)

§ 87(2)(b) initially reported (Board Review 01, 02) that he informed Sgt. Cooper that the machines were not working and asked him if he could allow passengers to enter through the emergency exit gate. Sgt. Cooper responded, “They gonna do what they want, tell them whatever the fuck and then get the fuck outta here.” During § 87(2)(b)'s sworn statement (Board Review 03) he testified that after he entered through the turnstiles and observed Sgt. Cooper, PO Pennacchio and PO Chavez, issuing summonses to the passengers, he told Sgt. Cooper that there was an issue with the metro card machines. Sgt. Cooper responded to § 87(2)(b) “I don’t want to be bothered with that. Get the fuck out of my face.”

Sgt. Cooper (Board Review 05) testified that as he was in the middle of issuing a summons to an unidentified individual, § 87(2)(b) approached him and informed him that the metro card machines were not working. Sgt. Cooper informed § 87(2)(b) that he would speak to him once he was finished issuing the summons. Sgt. Cooper did not tell § 87(2)(b) “I don’t want to be

bothered with that. Get the fuck out of my face.” § 87(2)(b) began yelling at him, “Are you going to fucking give them summonses also?” Sgt. Cooper did not remember any other statements § 87(2)(b) made.

PO Pennacchio (Board Review 06) testified that he heard § 87(2)(b) arguing with Sgt. Cooper, but did not know what the argument was about. He heard § 87(2)(b) say “Fuck” to Sgt. Cooper. PO Pennacchio did not hear Sgt. Cooper tell § 87(2)(b) “I don’t want to be bothered with that. Get the fuck out of my face.”

PO Chavez (Board Review 07) testified that he did not hear Sgt. Cooper tell § 87(2)(b) “I don’t want to be bothered with that. Get the fuck out of my face.”

§ 87(2)(b), § 87(2)(g)

Allegation (B) Force: Police Officer Michael Pennacchio used physical force against

§ 87(2)(b)

Allegation (C) Force: Police Officer Leonardo Chavez used physical force against

§ 87(2)(b)

§ 87(2)(b) initially reported that PO Pennacchio, and PO Chavez picked him up and shoved him through the door and threw him on the bottom step. During his sworn statement, § 87(2)(b) testified that after speaking with Sgt. Cooper, he went back upstairs to the turnstiles and warned the incoming passengers that the metro card machines were having issues and that there were officers at the bottom of the stairs. A few minutes later, PO Chavez approached § 87(2)(b) grabbed his jacket sleeve and instructed him to leave. PO Pennacchio approached and Sgt. Cooper instructed the officers to get § 87(2)(b) out of the station. PO Pennacchio and PO Chavez then lifted § 87(2)(b) by the waist of his pants and pushed him through the emergency gate. Once § 87(2)(b) was through the gate, PO Pennacchio and PO Chavez dropped him on the bottom steps in which landed with his body slouched against the wall. § 87(2)(b)’s right arm fell in between the wall and the hand railing, which caused him to apply pressure to his shoulder from holding up his body weight. From this, § 87(2)(b) sustained a shoulder injury.

PO Pennacchio testified that after PO Chavez opened the emergency gate and § 87(2)(b) walked through the gate, he heard a noise behind him. He turned back and as he walked towards § 87(2)(b) he saw § 87(2)(b) lying on the floor on the bottom step. PO Pennacchio asked § 87(2)(b) if he was ok and § 87(2)(b) did not respond.

PO Chavez testified that once § 87(2)(b) exited through the emergency exit gate, he jumped in the air and landed on the bottom step holding the rail. He did not hear § 87(2)(b) complain of any pain or injuries.

Sgt. Cooper testified that § 87(2)(b) walked back to the turnstile and told several passengers that they should not pay their fares. A few of the passengers then entered through the emergency exit gate, but Sgt. Cooper did not see who opened the door. § 87(2)(b) then walked back to Sgt.

Cooper and stood in the middle of the stairway blocking the path for passengers. As § 87(2)(b) stood in the way he told Sgt. Cooper that he was unfairly issuing summonses to the passengers. Sgt. Cooper instructed § 87(2)(b) to move out of the way and get on his train, and § 87(2)(b) responded, "You can't tell me what to do." Sgt. Cooper then instructed PO Pennacchio and PO Chavez to eject § 87(2)(b) from the subway station. PO Pennacchio and PO Chavez each held each of § 87(2)(b)'s shoulder's and escorted him through the emergency gate. Sgt. Cooper observed one of the officers use their hand to push the gate open and § 87(2)(b) walked through the gate. Once § 87(2)(b) was outside of the gate, he jumped in the air and landed on the last step. PO Pennacchio and PO Chavez asked § 87(2)(b) if he was ok, but § 87(2)(b) did not respond. PO Pennacchio and PO Chavez returned to their post and continued issuing summons. Sgt. Cooper did not see PO Pennacchio and PO Chavez lift § 87(2)(b) by his pants or drop § 87(2)(b) on the bottom step. He did not hear § 87(2)(b) complain of any pain or injury.

It is undisputed that § 87(2)(b) was escorted through the emergency gate and that he fell to the floor. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b).

Allegation (D) Abuse of Authority: Sergeant Kevin Cooper refused to provide his name to

§ 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Michael Pennacchio refused to provide his shield number to

§ 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Michael Pennacchio refused to provide his name to

§ 87(2)(b)

Allegation (G) Discourtesy: Police Officer Michael Pennacchio spoke discourteously to

§ 87(2)(b)

During § 87(2)(b)'s initial report of the incident, he provided Sgt. Cooper's and PO Pennacchio's shield numbers. He later testified that, Sgt. Cooper and PO Pennacchio came back to him by the exit gate. § 87(2)(b) asked Sgt. Cooper and PO Pennacchio for their names, shield numbers and command. Sgt. Cooper provided his shield number and told § 87(2)(b) that he was with Transit District 2, but did not provide his name. PO Pennacchio then flashed his shield to § 87(2)(b) and put it away. § 87(2)(b) asked PO Pennacchio to see the shield again and PO Pennacchio responded, "Get your shit and leave." PO Pennacchio did not show his shield again to § 87(2)(b) and he did not provide his name to § 87(2)(b).

Sgt. Cooper testified that § 87(2)(b) remained at the entrance to the subway station for approximately 10 minutes before he and PO Pennacchio went outside to speak to him. § 87(2)(b) asked Sgt. Cooper for his shield number and he verbally provided it to him. Sgt. Cooper did not recall hearing § 87(2)(b) ask for his name. He did not recall hearing § 87(2)(b) ask PO Pennacchio for his name and shield number and he did not hear PO Pennacchio tell § 87(2)(b) "Get your shit and leave."

PO Pennacchio testified that a few minutes later, he and Sgt. Cooper went outside to the entrance of the subway where § 87(2)(b) stood. § 87(2)(b) asked PO Pennacchio for his shield number

and he verbally provided it and showed it to him. PO Pennacchio did not hear § 87(2)(b) ask for his name. PO Pennacchio did not hear § 87(2)(b) ask Sgt. Cooper for his name.

PO Chavez testified that Sgt. Cooper and PO Pennacchio went and speak with § 87(2)(b) outside. But, he did not hear their conversation.

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (H) Abuse of Authority: An officer did not process § 87(2)(b) s complaint regarding officers.

§ 87(2)(b) initially reported that an unidentified uniformed officer told him to leave and go to another subway station. § 87(2)(b) later testified that an unidentified female asked if he was ok. As § 87(2)(b) spoke to the unidentified female, PO1, described as a white male, 5'9"-5'10" tall, late 20s to early 30s, slim build, black hair in uniform, exited a nearby room and approached § 87(2)(b). PO1 asked § 87(2)(b) "Why are you harassing the passengers?" § 87(2)(b) explained what happened and told PO1 that he wanted to make a complaint against the officers. PO1 informed § 87(2)(b) that if he was instructed to leave he should follow what he was told. § 87(2)(b) left the subway station without a report of his complaint against the officers.

Sgt. Cooper explained after he finished speaking to § 87(2)(b) he observed a uniformed officer speaking to § 87(2)(b). He did not know who the officer was and he did not hear their conversation.

PO Pennacchio testified that he observed an unidentified uniformed officer in the area speaking to § 87(2)(b) but he did not get involved.

PO Chavez testified that he observed an unidentified uniformed officer in the area. He did not know who the officer was as he was not from his command.

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED].

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one CCRB complaint and has been named a victim in two allegations (Board Review 08)
 - § 87(2)(b)
- Sgt. Kevin Cooper has been a member of service for 31 years and has been a subject in three CCRB complaints and three allegations, of which one was substantiated.
 - 639270 involved a substantiated allegation of force against Sgt. Cooper. The Board had No Recommendations. § 87(2)(g)
- PO Michael Pennacchio has been a member of service for 19 years and this is the first CCRB complaint to which he has been a subject.
- PO Leonardo Chavez has been a member of service for 19 years and has been a subject in four CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York alleging assault and requesting unspecified damages. There is no 50H hearing scheduled (Board Review 04).
- According to the Office of Court Administration (OCA), between November 16, 2009 and July 16, 2019, § 87(2)(b) was convicted of disorderly conduct (once) and § 87(2)(b) OCA does not list any other convictions (Board Review 09).

Squad No.: 1

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date